

## REMARKS

Claims 36, 38 and 40 have been canceled. Claims 1, 5, 6, 12, 15-21, 23-35, 37 and 39 are pending. Independent claims 1, 6 and 15 have been amended to overcome the rejections based on the prior art of record. No new matter was added. Applicants respectfully submit that the present application is in condition for allowance.

### Objection to Specification/Rejection of Claims Under 35 USC §132/§112 (first paragraph)

The limitation in each of independent claims 1, 6 and 15 requiring the “further layer” to have “5% to less than 30% by weight of a platelet filler” is objected to by the Examiner as being directed to subject matter not supported by the original disclosure.

Claims 1, 6 and 15 have each been amended to include the limitations stated in canceled claims 36, 38 and 40, respectively. Each now requires 5% to 15% of a platelet filler.

Applicants respectfully submit that the above referenced objections based on 35 USC §132 and §112, first paragraph, have been overcome.

### Rejection of Claims Under 35 USC §103(a)

Claims 1, 5, 6, 12, 15-21 and 23-40 are rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 4,842,951 issued to Yamada et al. in view of U.K. Patent Application Publication No. GB 2295617 A of Branch (a named inventor of the present application).

The Yamada patent discloses a laminate used to form containers for foods, beverages and medicines. It includes a gas permeation-resistant resin layer (22) that has a thickness of about 5 to 100  $\mu\text{m}$  and that is sandwiched between a pair of talc-filled polyolefin based resin layers (23). The Branch reference is cited for its disclosure of a platelet filler of high purity talc having an aspect ratio of at least 5, an average aspect ratio of from 16 to 30, and a CIE whiteness of at least 40.

The Yamada patent teaches on column 4, lines 20-37, that:

“... it is essential that the polyolefin based resin layer contains the inorganic filler in an amount of 30-80% by weight, preferably 35-70% by weight. When the content of the inorganic filler is less than 30% by weight, not only heat resistance and mechanical strength are decreased but also the polyolefin based resin layer has a high heat of combustion which will include damages or disorder in incinerators.”

Yamada teaches that the ideal inorganic filler content is 60% by weight and provides clear reasons why the skilled person should avoid lowering the inorganic filler content of the specified resin layer to less than 30% by weight. In fact, Yamada states that “it is essential” that the content of inorganic filler in the resin layer not be less than 30% by weight. Yamada states that a laminate having the specified resin layer with less than 30% by weight of inorganic filler will not have sufficient heat resistance or mechanical strength.

With respect to the use of filler disclosed in Yamada, the Examiner states:

“... the amount of inorganic filler in the further layer, comprising calcium carbonate and talc, is 30% (column 4, lines 20-22) and the further layer is therefore filled with less than 30% talc by weight.”

Independent claims 1, 6 and 15 of the present application have each been amended to require the “further layer” to consist of “a non-polar thermoplastic polyolefin resin filled with 5% to 15% by weight of a platelet filler, said platelet filler consisting of high purity talc”. No new matter was added. For example, see page 4, lines 11-13, and claim 1, as filed, of the present application which state that the further layer is formed from substantially non-polar thermoplastics resin filled with a platelet filler, preferably high purity talc.

Accordingly, claims 1, 6 and 15, as amended, each require the “further layer” to have no more than 15% by weight platelet filler in total. This would include the total of both the calcium carbonate and talc required by Yamada, which clearly teaches that this total must be at least 30% by weight, more preferably 60% by weight. In addition, claims 1, 6 and 15 of

the present application, as amended, require the “further layer” to consist only of: (i) a non-polar thermoplastic polyolefin resin; and (ii) a platelet filler. The platelet filler is required to consist of high purity talc. Thus, this precludes the presence of any calcium carbonate in the “further layer”. In any case, the total amount of filler in the “further layer” cannot exceed 15% by weight.

The Yamada patent “teaches away” from a layer having a content of inorganic filler (including the total of calcium carbonate, talc, etc.), or platelet filler, in the claimed range of 5% to 15%. The Court of Appeals for the Federal Circuit has held that a reference that “teaches away” from the claimed invention defeats any *prima facie* case of obviousness based on the reference. See In re Fine, 5 USPQ2d 1596 (Fed Cir 1988), In re Hedges, 228 USPQ 685 (Fed Cir 1986), and In re Nielson, 2 USPQ2d 1525 (Fed Cir 1987). In fact, a reference that “teaches away” from the claimed invention supports a finding of nonobviousness of the claimed invention.

For at least the above stated reasons, Applicants submit that independent claims 1, 6 and 15, and all claims dependent therefrom, are patentable and nonobvious over the cited combination of the Yamada patent in view of the Branch reference.

In addition to the above reasons, Applicants note that the present invention is directed to a platelet filled non-polar thermoplastic polyolefin resin layer (ie., “further layer”) that: (i) is positioned internally of a non-platelet-filled core barrier layer; (ii) contains 5% to 15% by weight high purity talc; and (c) has a CIE whiteness index of at least 40. Applicants have found that such a combination provides a laminate for a container that is particularly resistant to absorbing flavoring molecules from food present on the inside of the container. It also allows the non-polyolefin core barrier layer to be relatively thin (less than 25 microns) while the permeation rate of flavor molecules through the laminate remains very low (see page 7,

lines 14-18, of the present application, as filed). The container is also heat-resistant and sufficiently rigid for most purposes. Such a container, laminate, and method are neither fairly disclosed nor made obvious by Yamada in view of Branch.

Further, Applicants respectfully submit that one of skill in the art would not consider combining the teachings of the Branch reference with the Yamada patent. However, even if these references are combined, the skilled person would consider it necessary to include an inorganic filler, in total, of at least 30% by weight since Yamada clearly teaches that "it is essential" to use such an amount.


Accordingly, reconsideration and removal of the §103(a) rejection is requested.

#### Conclusion

In view of the above remarks, Applicants respectfully submit that the rejections have been overcome and that the present application is in condition for allowance. Thus, a favorable action on the merits is therefore requested.

Please charge any deficiency or credit any overpayment for entering this Amendment to our deposit account no. 08-3040.

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